



**Teachers Service Commission v Shaiti (Employment and Labour Relations Appeal E036 of 2024) [2025] KEELRC 2825 (KLR) (16 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2825 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E036 OF 2024  
MA ONYANGO, J  
OCTOBER 16, 2025**

**BETWEEN**

**TEACHERS SERVICE COMMISSION ..... APPELLANT**

**AND**

**MICHAEL M'MASI SHAITI ..... RESPONDENT**

*(Being an appeal against the Ruling of Honourable P. N. Areri Senior Principal Magistrate delivered on 31st October, 2024 in Eldoret CMELRC No. E243 of 2024)*

**JUDGMENT**

1. This Appeal arises from a ruling delivered by the trial court in Eldoret CMELRC No. E243 of 2024 on the 31<sup>st</sup> October 2024.
2. The brief background of the matter is that vide a Statement of Claim dated 15<sup>th</sup> August 2024, the Respondent instituted proceedings against the Appellant, seeking reinstatement and compensation for alleged unlawful termination of his employment.
3. The Appellant entered appearance through a Memorandum of Appearance dated 4<sup>th</sup> September 2024 and, contemporaneously, filed a Notice of Preliminary Objection of even date. The objection was premised on the ground that the Statement of Claim was statute-barred pursuant to the mandatory provisions of Section 90 of the *Employment Act*, 2007, and therefore the court lacked jurisdiction to entertain the claim.
4. The trial court directed that the preliminary objection be canvassed by way of written submissions, which both parties duly filed. Upon considering the submissions, the learned trial magistrate, in a ruling delivered on 6<sup>th</sup> September 2024, dismissed the preliminary objection, holding that the claim was properly before the court as it was not barred by limitation.



5. Being aggrieved by the said ruling, the Appellant lodged the instant appeal through a Memorandum of Appeal dated 7<sup>th</sup> November 2024, raising the following grounds:
  - i. The learned Magistrate acted without Jurisdiction as the matter in dispute was statutorily time-bared based on when the cause of action arose.
  - ii. The learned Magistrate grossly erred in failing to appreciate the nature and implication of the Appellant's Preliminary Objection, which had been properly and legally raised and argued.
  - iii. The learned Magistrate determined ELDORET MCELRC E243 OF 2024 on the wrong principle of law, misinterpretation and misapplication of the law and, in so doing, arrived/made an erroneous decision to dismiss a preliminary objection founded on Section 90 of the [Employment Act](#), 2007.
  - iv. The learned Magistrate erred in law and, in fact, in determining a substantial issue of law without investigating and/or determining the actual date of the cause action and in so doing, he reached a finding that was/is inconsistent with the documented facts preceding or on the face of the claim.
  - v. The learned Magistrate misconstrued the court's role and the manner of exercising its discretion in a matter where a preliminary objection on the grounds of law had been raised and canvassed; in so doing, he misdirected himself on the extent and/or the exercise of the court's discretion.
  - vi. The learned Magistrate erred in law and fact by failing to find that the issue of limitation of time, as raised and argued by the Appellant, went to the heart of the court's jurisdiction and hence could not be waived, diminished or wished away by the court or the Parties.
  - vii. The learned Magistrate erred in law and fact by overlooking the material placed on the court's record by the Appellants and, in so doing, reached unsubstantiated findings and/or mistakenly exercised discretion in favour of the Respondent.
  - viii. The learned Magistrate exercised his discretion arbitrarily in a manner inconsistent with the [Employment Act](#) and established jurisprudence.
6. Pursuant to the directions issued on 3<sup>rd</sup> February 2025, the appeal was disposed of by way of written submissions. The Appellant's submissions are dated 24<sup>th</sup> March 2025, while the Respondent's submissions are dated 11<sup>th</sup> March 2025.

### **The Appellant's submissions**

7. The Appellant submitted that the trial court erred in holding that the Respondent's claim was not time-bared under Section 90 of the [Employment Act](#). It was contended that the trial court lacked jurisdiction to entertain the suit.
8. It is the Appellant's submission that the Respondent's employment was terminated with effect from 14<sup>th</sup> July 2021 and the decision was communicated through a letter dated 22<sup>nd</sup> July 2021 and that as such, the cause of action arose on 14<sup>th</sup> July 2021 when the Respondent was dismissed and notified of his removal from the register of teachers.
9. According to the Appellant, the Respondent was required to file his claim within three (3) years from 14<sup>th</sup> July 2024 but filed it on 29<sup>th</sup> August 2024 beyond the statutory limitation period, rendering it time-bared. In support of this position, the Appellant placed reliance on the cases of Josephat Ndirangu v



Henkel Chemicals (EA) Ltd [2013] eKLR, Fred Mudave Gogo v G4S Security Services (K) Ltd [2014] eKLR and Attorney General v Andrew Maina Githinji & Another [2016] eKLR, which decisions, the Appellant argued, reiterated that limitation under Section 90 serves to protect both employers and employees from stale claims and evidentiary prejudice.

10. Further, the Appellant submitted that the cause of action accrued upon issuance of the dismissal letter on 14<sup>th</sup> July 2021, and not upon delivery of the Review Committee's decision on 7<sup>th</sup> November 2022 as held by the trial court. On this basis, the Appellant maintained that the lodging of an appeal or review under the Teachers Service Commission Regulations did not suspend the running of time under Section 90. The cases of Benjamin Wachira Ndiithi v Public Service Commission & Another [2014] eKLR and Hillarion Mwabolo v Kenya Commercial Bank [2013] eKLR, were cited in support of the position that administrative reviews do not stop the limitation clock.
11. The Appellant also cited the case of Rift Valley Railways (Kenya) Ltd v Hawkins Wagonza Musonye & Another [2016] eKLR,
12. In the end, the Appellant submitted that the learned magistrate erred by relying on the Review Committee's letter dated 7<sup>th</sup> November 2022 instead of the dismissal letter dated 22<sup>nd</sup> July 2021 and by failing to apply binding precedent on the issue of accrual of time.
13. Consequently, the Appellant urged this Court to find that the suit before the trial court was time-barred, and to allow the appeal with costs.

### **Respondent's submissions**

14. On his part, the Respondent identified the following issues for determination: -
  - i. Whether the learned magistrate erred in determining the actual date of accrual of the cause of action
  - ii. Whether the suit was statutorily time-barred
  - iii. Whether the learned magistrate improperly exercised discretion in favor of the Respondent.
15. On the first issue, the Respondent while relying on the documents he filed in support of his claim on record submitted that the cause of action was within the statutory limitation period.
16. It was his submission that he was dismissed from employment by the Appellant on 14<sup>th</sup> July 2021 and subsequently removed from the register of teachers. He asserted that pursuant to the Code of Regulations for Teachers, he applied for review of the dismissal decision and that on 7<sup>th</sup> November 2022, the Review Committee dismissed his appeal upholding the termination.
17. The Respondent maintained that in line with the Code of Regulations, he was required to exhaust all internal dispute resolution mechanisms before approaching the Court. He contended that time began to run from the date the Review Committee rendered its final decision and not from the date of the initial dismissal. In support of this position, the Respondent cited the case of Makewa v Teachers Service Commission [2024] eKLR
18. On the second issue, the Respondent submitted that since the Review Committee's decision was delivered on 7<sup>th</sup> November 2022 and the Statement of Claim was filed on 22<sup>nd</sup> August 2024, the suit was filed within the three-year statutory period.



19. Lastly, on whether the learned magistrate exercised discretion in favor of the Respondent, the Respondent submitted that the learned magistrate properly interpreted the law and correctly held that the suit was not time-barred.
20. The Respondent therefore prayed that the appeal be dismissed with costs and that the matter be remitted to the trial court for hearing and determination on the merits.

### **Determination**

21. Upon carefully considering the record of appeal, the rival submissions and the authorities cited by both parties, the main issue for determination in this appeal is whether the learned trial magistrate erred in law and fact by finding that the Respondent's claim was not time-barred under Section 90 of the *Employment Act*.
22. It is common ground that the Respondent was dismissed from employment by the Appellant on 14<sup>th</sup> July 2021 and the decision was communicated through a letter dated 22<sup>nd</sup> July 2021. The Respondent subsequently lodged an appeal for review of the dismissal decision which was dismissed on 7<sup>th</sup> November 2022. The evidence on record shows that the Statement of Claim before the lower court was filed on 22<sup>nd</sup> August 2024.
23. Section 90 of the *Employment Act*, 2007 provides: -

“Notwithstanding the provisions of Section 4(1) of the *Limitation of Actions Act*, no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained of...”
24. The import of the above provision is that any claim founded on an employment relationship must be instituted within three years from the date the cause of action accrued.
25. In the instant case, the question that needs to be answered is: When did the cause of action accrue in this matter?
26. On one hand, the Appellant contends that the cause of action accrued on 14<sup>th</sup> July 2021, when the Respondent was dismissed from service or at the latest on 22<sup>nd</sup> July 2021 when the dismissal was communicated to him.
27. The Respondent, on the other hand, maintains that the cause of action accrued on 7<sup>th</sup> November 2022 when the Review Committee upheld the dismissal.
28. In the case cited by the Appellant, Attorney General & Another v Andrew Maina Githinji & Another [2016] eKLR, the Court of Appeal observed: -

“ 15. I have considerable sympathy for the reasoning in all the above cases which leads me to the conclusion that the cause of action in this case did not arise after the conclusion of the criminal case against the respondents. The respondents had a clear cause of action against the employer when they received their letters of dismissal on 2<sup>nd</sup> October 2010. They had all the facts which had been placed before them in the disciplinary proceedings and they could have filed legal proceedings if they felt aggrieved by that dismissal, but they did not.”



29. Similarly, in *Benjamin Wachira Ndiithi v Public Service Commission & Another* [2014] eKLR, the court held that the fact that an employee seeks a review or an appeal against dismissal does not stop time from running for purposes of limitation. The same reasoning was upheld in *Hillarion Mwabolo v Kenya Commercial Bank* [2013] eKLR, where the court stated that a pending administrative appeal does not suspend or defer the running of time.
30. The above decisions establish the principle that internal review or appeal mechanisms do not suspend the statutory limitation period. An employee's cause of action arises and time begins to run once a dismissal takes effect
31. In the present case, the Respondent was dismissed on 14<sup>th</sup> July 2021. The Statement of Claim is dated 15<sup>th</sup> August 2024 and, according to the Respondent's own submissions, was filed on 22<sup>nd</sup> August 2024. Time therefore began to run on 14<sup>th</sup> July 2021 and the three-year limitation period lapsed on 14<sup>th</sup> July 2024.
32. Evidently, the claim was lodged more than three years after the dismissal of the Respondent on 14<sup>th</sup> July 2021, outside the period prescribed under Section 90 of the *Employment Act*.
33. While the Respondent argued that he was obliged to exhaust internal mechanisms before filing suit, this argument cannot override a statutory limitation period expressly provided for by law. In *Rift Valley Railways (Kenya) Ltd v Hawkins Wagonza Musonye & Another* [2016] eKLR the Court of Appeal emphasized that:
- “There are no exceptions to the three-year limitation period under Section 90 of the *Employment Act* save for cases of continuing injury or damage.”
34. The Respondent's reliance on the decision in *Makewa v Teachers Service Commission* [2024] eKLR is in my respectful view, misplaced as the case supports the Appellants position. In the case the court held as follows:
- The Court has considered the preliminary objection and parties' respective positions. Section 90 of the *Employment Act* provides that for a claim based on dismissal or termination, the suit must be filed within three years from the date of such termination or dismissal. The petitioner's claim is based on the decision of dismissal with loss of pension. Obviously, the cause of action is time barred and the petition is merely calculated to avoid the time barring. It is an abuse of process. The petition is hereby dismissed with orders each party to bear own costs of the proceedings and file be returned to Machakos sub registry.
35. In the present case, the Respondent's dismissal was complete and effective upon communication by the dismissal letter on 22<sup>nd</sup> July 2021. The subsequent review process was an internal administrative recourse that did not suspend the operation of Section 90 of the *Employment Act*.
36. It therefore follows that by the time the Respondent filed his claim before the trial court on 22<sup>nd</sup> August 2024, the cause of action had already been extinguished by operation of law. The learned magistrate thus erred in law and in fact in holding that the cause of action accrued on 7<sup>th</sup> November 2022 when the Review Committee upheld the dismissal and that the suit was not time-barred.
37. In light of the foregoing analysis, I find and hold that the Statement of Claim dated 15<sup>th</sup> August 2024 was filed out of time contrary to the mandatory provisions of Section 90 of the *Employment Act*.



38. Consequently, I find merit in the appeal and allow it. The ruling and orders of the Honourable P. N. Areri (Senior Principal Magistrate) delivered on 31<sup>st</sup> October 2024 in Eldoret CMELRC No. E243 of 2024 are hereby set aside and substituted with the following orders: -

- i. The Notice of Preliminary Objection dated 4<sup>th</sup> September 2024 is hereby upheld.
- ii. The Statement of Claim dated 15<sup>th</sup> August 2024 is struck out for being statute-barred under Section 90 of the *Employment Act*, 2007.
- iii. Each party shall bear its own costs of the proceedings before the trial court and on appeal

39. Orders accordingly.

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**DATED, DELIVERED AND SIGNED THIS 16<sup>TH</sup> DAY OF OCTOBER, 2025.**

**M. ONYANGO**

**JUDGE**

